

Kant

FILED FOR RECORD
03 OCT -8 PM 3:39
BECKY HANKS
DISTRICT CLERK
HENDERSON COUNTY, TX

NO. 03A-417

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
vs.	§	
	§	
MARIA ELENA GARZA a/k/a MARIA	§	
ELENA ELIZONDO d/b/a ELIZONDO	§	
& ASSOCIATES d/b/a AGENCIA	§	HENDERSON COUNTY, T E X A S
ELIZONDO d/b/a AGENCIA HISPANA	§	
de TYLER d/b/a INDEPENDENT	§	
NATIONAL SERVICE INS. DEP. CTR.	§	
	§	
	§	173RD JUDICIAL DISTRICT
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE
TEMPORARY RESTRAINING ORDER AND ASSET FREEZE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition and Application for Temporary Restraining Order and Asset Freeze complaining of and against MARIA ELENA GARZA a/k/a MARIA ELENA ELIZONDO d/b/a ELIZONDO & ASSOCIATES d/b/a AGENCIA ELIZONDO d/b/a AGENCIA HISPANA de TYLER d/b/a INDEPENDENT NATIONAL SERVICE INS. DEP. CTR. (referred to collectively as "Defendant GARZA").

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

II. JURISDICTION

2. This suit is brought by the ATTORNEY GENERAL through the Consumer

Protection Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by § 17.47 of the Deceptive Trade Practices-Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. 17.41 *et seq.*

III. DEFENDANT

3. Defendant MARIA ELENA GARZA a/k/a MARIA ELENA ELIZONDO d/b/a ELIZONDO & ASSOCIATES d/b/a AGENCIA ELIZONDO d/b/a AGENCIA HISPANA de TYLER d/b/a INDEPENDENT NATIONAL SERVICE INS. DEP. CTR. (hereinafter Defendant "GARZA") is an individual residing at 2455 Eastwood Estates, Seven Points, Henderson County, Texas 75143. Defendant GARZA may be served with process at that same address.

IV. VENUE

4. Venue of this action lies in Henderson County pursuant to § 17.47(b) of the DTPA because the transactions and events giving rise to this action occurred in Henderson County and/or because Defendant GARZA has done business in Henderson County.

V. PUBLIC INTEREST

5. By reason of the institution and operation of the unlawful practices set forth herein, Defendant has caused and will continue to cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS and its citizens, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

6. Defendant GARZA is engaged in "trade" and "commerce" as defined by

§17.45(6) of the DTPA, in that Defendant GARZA is in the business of selling immigration services to Texas consumers.

VII. NOTICE BEFORE SUIT

7. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin Defendant GARZA from continued violations of the DTPA. Sworn affidavits attached hereto establish that Defendant GARZA falsely represents herself as an agent of the Immigration and Naturalization Service ("I.N.S.")¹ to consumers seeking immigration services; collects fees and penalties to be paid to the I.N.S. on behalf of her clients, yet keeps those monies for her personal benefit; and manufactures documents that purport to be official I.N.S. documents to entice consumers into paying exorbitant fees and penalties which are ultimately used for Defendant GARZA's personal benefit. If Defendant is not immediately restrained, she will continue to use these false, misleading, or deceptive practices in her immigration business and may cause many more consumers to lose their money by such deception. As such, the State is initiating this action without notice to Defendant as authorized by § 17.47 (a) of the DTPA.

VIII. ACTS OF AGENTS

9. Whenever in this Petition it is alleged that Defendant GARZA did any act or thing, it is meant that Defendant performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendant, and in each instance, the officers, agents or employees of said Defendant were then authorized to and did in fact act on

¹ United States Immigration and Naturalization Service ("I.N.S.") has been reorganized under the Department of Homeland Security as Immigration and Customs Enforcement ("I.C.E.").

behalf of Defendant or otherwise acted under the guidance and direction of the Defendant.

IX. NATURE OF DEFENDANT'S CONDUCT

10. Defendant GARZA offers immigration services to individuals who wish to obtain legitimate immigration credentials from the U.S. Immigration and Naturalization Service for fees of up to several thousand dollars. Defendant GARZA works out of the Seven Points Bingo Hall, in Seven Points, Texas soliciting and counseling prospective clients regarding immigration matters². Defendant GARZA falsely represents herself as an I.N.S. agent assigned to I.N.S.'s Corsicana office, although there is no such office. GARZA charges consumers an initial fee of \$200 which GARZA represents as an application fee to start the process to obtain a work permit, Green card and obtain an international driver's license. Defendant Garza falsely represents that all application fees paid to her will be forwarded to the I.N.S. (See **Exhibits 1 and 2**, Affidavits of Sherrill Watson and Dora Bookman).

11. Soon after paying GARZA, consumers receive a "Notice of Action" form purportedly from the I.N.S. indicating that their "application for voluntary departure" has been received and acknowledges receipt of \$200.00. The purported "Notice of Action" letter states that the petition has been "approved" and "written notification" will be sent as soon as the applicant pays a penalty of \$1,202.00. These purported "notices" state that the "case has been properly filed" and to contact Defendant GARZA regarding any questions and lists Defendant GARZA's cell phone number as one of the contact numbers. Examples of these "Notice of Action" letters are attached as **Exhibit 3**.

² Defendant Garza also conducted similar activities under the name Agencia Hispana de Tyler at 1421 S. Vine in Tyler, Texas. Defendant GARZA also uses the following d/b/a names: Agencia Elizondo, Elizondo & Associates, and Independent National Service Dep. Ctr.

12. On September 30, 2003, agents with U.S. Immigration and Customs Enforcement ("I.C.E." formerly I.N.S.) assisted local police authorities in a consensual search of Defendant GARZA's residence. They found numerous documents that purportedly came from the Southern Service Center of the Immigration and Naturalization Service, including official Notices of Action similar to those described in paragraph 11 and other notices allegedly from I.N.S. officials. It is the opinion of Special Agent Edward Koranda of Immigration and Customs Enforcement that the documents found in GARZA's residence are fraudulent and represent alterations of notices previously issued by the I.N.S. (See **Exhibit 4**, Affidavit of Edward G. Koranda, Special Agent of the United States Department of Homeland Security, Immigration and Customs Enforcement).

13. Agents with I.C.E. also discovered several unopened envelopes in Defendant GARZA's residence that the Postal Service had returned to sender. Several of these envelopes contained a return address listed as "I.N.S. DEPARTMENT CTR., 310 12th ST., CORSICANA, TEXAS." This is the same address for Agencia Elizondo and Elizondo & Associates, Defendant Garza's d/b/a names. (See **Exhibit 5**, one-page advertisement for Agencia Elizondo). Defendant GARZA also uses business cards that identify her address as 310 12th Street in Corsicana. (See **Exhibit 6**). According to Agent Koranda, there is no official I.N.S. office in Corsicana, Texas. (See **Exhibit 4**, para. 4).

14. Consumers allege that Defendant Garza offers for sale and sells international driving permits (IDPs)³ and charges up to \$200.00. Defendant Garza falsely represents that these

³ An International Driving Permit ("IDP") is sometimes referred to as an "international driver's license." Those terms are used interchangeably throughout this petition.

licenses are legitimate and will be accepted by police officers in lieu of a valid Texas driver's license. The international driver's licenses sold by Defendant Garza are completely bogus as the only entities authorized by the United States Government to issue an IDP in this country are the American Automobile Association ("AAA") and the American Automobile Touring Association ("AATA"). (See **Exhibit 7**, excerpt from U.S. Department of State Bureau of Consular Affairs website regarding "International Driving Permits"). Furthermore, an IDP is only valid when carried in conjunction with, and acts as a translation of, a driver's license and must be issued in the same country as the driver's license of the traveler. As such, only persons with a valid driver's license issued by a state of the United States can obtain an IDP issued in the United States.

15. Other consumers allege that Defendant Garza after meeting with them at the Seven Points Bingo Hall regarding their immigration matters falsely represented that they would be required to pay the I.N.S. a penalty fee of \$1,202.00 which she collected but never forwarded to the I.N.S. In at least one instance, a consumer who paid Defendant Garza the penalty fee never received any kind of confirmation from I.N.S. and Defendant Garza has refused to provide any documentation that she forwarded the money to the agency despite repeated requests to do so. (See **Exhibit 8**, Affidavit of Silvio Lopez Santander).

16. In a sworn statement provided to the I.C.E. (formerly I.N.S.) on October 1, 2003, Defendant Garza admitted that she would deposit the "penalty fee" of \$1,202.00 in the bank and keep \$400 and send the remainder to a "Martha Martinez." In her statement, Defendant Garza stated that she knew that the forms she was using were fake but she did not want the aliens to lose their jobs. Defendant Garza also admitted that she told the aliens' employers that she

worked for the I.N.S. so they would not lose their jobs. (See **Exhibit 9**, sworn statement of Maria Elena Garza).

17. The State alleges that a significant number of individuals have been victimized by Defendant Garza's false, misleading, or deceptive practices. A receipt book found by I.C.E. during their search of Defendant Garza's residence shows she accepted \$12,405.00 from 50 individuals from September 5, 2002 to October 9, 2002. The State has reason to believe that these 50 individuals represent only a small percentage of Defendant GARZA'S victims and that many more will be discovered during the pendency of this case.

X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

18. Defendant, as set out in Paragraphs 1 through 17, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading, or deceptive acts and practices in violation of Section 17.46(a) and (b) of the Texas Deceptive Trade Practices Act, including but not limited to:

- A. Falsely representing that Defendant GARZA works for the Immigration and Naturalization Service or any other government agency;
- B. Falsely representing that Defendant GARZA works for the Immigration and Naturalization Service at their Corsicana office;
- C. Falsely representing that application fees and penalties paid to Defendant GARZA will be forwarded to the Immigration and Naturalization Service;
- D. Falsely representing that the Immigration and Naturalization Service received application fees paid to Defendant GARZA by her clients;
- E. Falsifying government documents to make it appear that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service received the \$200 application fee given to GARZA by her clients;
- F. Falsifying government documents to make it appear that the Immigration and

Customs Enforcement or its predecessor the Immigration and Naturalization Service was imposing a penalty upon GARZA's clients in the amount of \$1,202.00;

- G. Falsifying government documents to make it appear that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service had approved her clients' application for legitimate immigration credentials;
- H. Failing to disclose to consumers that the American Automobile Association or American Automobile Touring Association are the only entities authorized by the United States Department of State to issue international driving permits;
- I. Selling an international driving permit unless authorized to do so in writing by the United States Department of State;
- J. Failing to disclose that a person may only obtain an international driver's license in the United States if that person already has a valid driver's license issued by a state of the United States;
- K. Falsely representing that an international driving permit secured through Defendant Garza gives one the legal right to drive or operate a motor vehicle in the United States; and
- L. Falsely representing that an international driving permit secured through Defendant Garza can legally serve as a substitute for a Texas driver's license when a driver's license is requested by law enforcement officials.

19. Moreover, the Consumer Protection Division has reason to believe that the above actions specifically violate Section 17.46(a) and the following provisions of Section 17.46(b) of the DTPA:

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of §17.46(b)(2);
- B. Causing confusion or misunderstanding as to the affiliation, connection, or association with or certification by another in violation of §17.46(b)(3);
- C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or

connection which they do not have in violation of §17.46(b)(5); and

- D. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of §17.46(b)(12);
- E. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of §17.46(b)(24).

XI. DISGORGEMENT

20. All of Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits. Defendant should be ordered to disgorge all monies secured through deception, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of the victimized consumers and the State of Texas.

XII. EQUITABLE RESCISSION

21. All agreements between consumers and Defendant GARZA should be subject to the equitable remedy of rescission.

XIII. CONSTRUCTIVE TRUST

22. A constructive trust should be placed upon all of Defendant GARZA's assets in favor of all consumers victimized by Defendant and in favor of the State of Texas until this court determines the appropriate amount of restitution and disgorgement.

**XIV. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION
AND ASSET FREEZE**

23. The State alleges that by reason of the foregoing, Defendant should not continue selling and marketing her immigration services in violation of the laws of the State of Texas and that unless injunctive relief is immediately granted, Defendant will continue to use false, misleading, or deceptive trade practices to entice consumers to pay her hundreds, if not, thousands of dollars in “application” and “penalty” fees purportedly owed to the Immigration and Naturalization Service which Defendant GARZA uses for her own benefit. Specifically, Defendant GARZA will continue to falsely misrepresent that she is an I.N.S. agent; will continue to accept money on behalf of the I.N.S.; falsify I.N.S. documents to entice consumers to pay her thousands of dollars; and continue to sell bogus international driver’s license permits. If Defendant is not immediately restrained, many more consumers may lose their money and be under the false impression that they are in the process of obtaining legitimate immigration credentials through Defendant’s false, misleading, or deceptive practices.

24. The State of Texas also asks that the assets of Defendant GARZA be frozen during the pendency of these legal proceedings to preserve monies for consumer restitution upon final judgment. Defendant GARZA received large sums of money from her victims based on her false representations that she was an I.N.S. agent and enticed her victims to send her thousands of dollars in “penalty fees” based on fraudulent I.N.S. documents she created. Furthermore, the international driver’s licenses she sold are completely bogus as they were not issued by the AAA or AATA. Defendant GARZA admits in her sworn statement that she deposited money

consumers gave to her to satisfy alleged I.N.S. "penalty fees" in the bank; kept \$400 and sent the remainder to another individual. As such, all of the money consumers paid to Defendant GARZA through her immigration scam is contraband. Unless the injunctive relief is granted, Defendant's assets may be dissipated, lost, altered, removed or materially injured. The interests of the State of Texas and the public require an Ex Parte Asset Freeze to preserve monies for consumer restitution.

25. Defendant, unless immediately restrained by this Honorable Court, will continue violating the laws of the State of Texas and injury, loss, and damage will result to the State of Texas and to the general public. For the reasons set forth above, the STATE OF TEXAS requests an Ex Parte Temporary Restraining Order; and after notice and hearing, a Temporary and Permanent Injunction as set out below, as authorized pursuant to § 17.47(a) of the DTPA.

XV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

26. The STATE OF TEXAS requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of witnesses who may need to be deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendant and her attorneys if known.

XVI. INJURY TO CONSUMERS

27. By means of the foregoing unlawful acts and practices, Defendant has acquired money or other property from identifiable persons to whom such money or property

should be restored, or who in the alternative are entitled to an award of damages.

XVII. PRAYER

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant MARIA ELENA GARZA a/k/a MARIA ELENA ELIZONDO d/b/a ELIZONDO & ASSOCIATES d/b/a AGENCIA ELIZONDO d/b/a AGENCIA HISPANA de TYLER d/b/a INDEPENDENT NATIONAL SERVICE INS. DEP. CTR. be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER with asset freeze be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendant individually and by her agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;
- B. Falsely representing that Defendant GARZA works for the United States Department of Homeland Security, Immigration and Customs Enforcement ("I.C.E.") or the United States agency formerly known as the Immigration and Naturalization Service ("I.N.S.");
- C. Failing to disclose in writing that Defendant GARZA does not work for the United States Department of Homeland Security, Immigration and Customs Enforcement or the United States agency formerly known as the Immigration and Naturalization Service;

- D. Falsely representing that Defendant GARZA works for Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service in their Corsicana office;
- E. Falsely representing that application fees and penalties paid to Defendant GARZA will be forwarded to the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service;
- F. Falsely representing that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service received application fees paid to Defendant GARZA by her clients;
- G. Falsifying government documents to make it appear that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service received the \$200 application fee given to GARZA by her clients;
- H. Falsifying government documents to make it appear that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service was imposing a penalty upon GARZA's clients in the amount of \$1,202.00;
- I. Falsifying government documents to make it appear that the Immigration and Customs Enforcement or its predecessor the Immigration and Naturalization Service had approved her clients' application for legitimate immigration credentials;
- J. Failing to disclose to consumers that the American Automobile Association or American Automobile Touring Association are the only entities authorized by the United States Department of State to issue international driving permits;
- K. Selling an international driving permit unless authorized to do so in writing by the United States Department of State;
- L. Failing to disclose that a person may only obtain an international driver's license in the United States if that person already has a valid driver's license issued by a state of the United States;
- M. Falsely representing that an international driving permit secured through Defendant Garza gives one the legal right to drive or operate a motor vehicle in the United States;
- N. Falsely representing that an international driving permit secured through

Defendant Garza can legally serve as a substitute for a Texas driver's license when a driver's license is requested by law enforcement officials;

- O. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- P. Causing confusion or misunderstanding as to the affiliation, connection, or association with or certification by another;
- Q. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which they do not have;
- R. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- S. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; and
- T. Failing to provide to any of Defendant's agents, servants, employees or representatives, written notice of the existence and terms of any injunction entered in this case, and of their duty to comply with its terms.

29. Plaintiff further prays that upon final hearing this Court order Defendant to restore all money or other property taken from identifiable persons by means of Defendant's unlawful acts or practices, or, in the alternative, award judgment for damages to compensate identifiable persons for such losses as provided in §17.47(d) of the DTPA.

30. Plaintiff further prays that upon final hearing this Court order Defendant to pay civil penalties of \$20,000.00 per violation of the DTPA to the State of Texas, as authorized by §17.47(c)(1) of the DTPA.

31. Plaintiff further prays that this Court grant leave to conduct telephone, oral,

written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date, with reasonable shortened notice to Defendant and their attorneys if known.

32. Plaintiff further prays for costs of Court, reasonable attorney fees as provided in TEX. GOV'T. CODE ANN. § 402.006(c), and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

ED D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

A handwritten signature in black ink, appearing to read 'KENNETH D. KIRKPATRICK', written over a horizontal line.

KENNETH D. KIRKPATRICK
Assistant Attorney General
Consumer Protection Division
State Bar No. 24007494
1600 Pacific Avenue, Suite 1700
Dallas, Texas 75201-3513
(214) 969-7639, ext. 123
Facsimile: (214) 969-7615

VERIFICATION

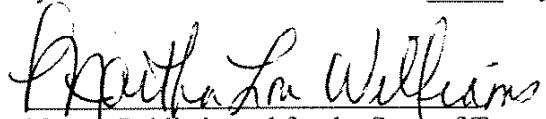
STATE OF TEXAS
COUNTY OF DALLAS

§
§

Before me, the undersigned notary, on this day, personally appeared Everardo J. Cantu, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said he is an investigator for the Office of the Attorney General, and is authorized to make this affidavit, that he has carefully read the allegations in the foregoing Plaintiff's Original Petition and Application for Temporary Restraining Order; and has reason to believe that the facts stated in it are within his personal knowledge and are true and correct to the best of his knowledge and belief and/or are supported by sworn affidavits or documents attached hereto and incorporated by reference.


EVERADO J. CANTU

SWORN TO and SUBSCRIBED before me by EVERADO J. CANTU on the 8th day of October, 2003.


Notary Public in and for the State of Texas

